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 ex rel. its Department of Taxation

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:)	Case No. BK-N-21-50431-mkn
)	Chapter 11 Subchapter V
ENCORE AUDIO VISUAL-)	
DESIGN, LLC,)	
)	Hearing Date: January 10, 2024
Debtor.)	Hearing Time: 9:30 a.m.

**REPLY IN SUPPORT OF STATE OF NEVADA, EX REL. ITS DEPARTMENT
 OF TAXATION'S MOTION TO CONVERT TO CHAPTER 7 CASE**

The State of Nevada, ex rel. its Department of Taxation ("Department"), by and through its attorneys, Aaron D. Ford, Attorney General; Kayla D. Dorame, Deputy Attorney General; and Mary M. Huck, Deputy Attorney General, hereby files its Reply in Support of Motion to Convert to Chapter 7 Case ("Reply"). This Reply is based on the pleadings on file herein, the following points and authorities, and any arguments the Court may permit.

I. LEGAL ARGUMENT

A. Burden of Proof and Legal Standard

Debtor fails to recognize that the burden of proof shifts once the Department establishes cause under 11 U.S.C. 1112(b)(2)(B). The burden shifts to the Debtor to

1 establish unusual circumstances exist **and** reasonable justification for its failure to
2 comply and that the omissions will be cured within a reasonable period of time.

3 The Department established “cause” owing to the Debtor’s failure to pay make plan
4 payments and Debtor’s failure to comply with the Court’s order. Indeed, Debtor admits it
5 is in default of the plan. Opposition, p. 1, lns. 24-26. This constitutes “cause” to grant the
6 Department’s motion.

7 While Debtor may try to defeat a motion to convert or dismiss the bankruptcy case
8 by showing that unusual circumstances exist to prevent dismissal or that factors
9 specifically set out in § 1112(b)(2)(B) exists, *In re Modanlo*, 413 B.R. 262, 271
10 (Bankr.D.Md.2009), Debtor fails to establish that “unusual circumstances” exist in
11 this case.

12 **B. 7.04 Post-Confirmation Default**

13 The Debtor is requesting a forty-five-day continuance of the hearing on the Motion
14 “to make further payments towards curing the arrears.” Opposition, pg. 1, lns. 26-28. At
15 the time of the Motion, Debtor should have made twenty plan payments totaling
16 \$65,703.40; however, only four payments were made in the total amount of \$13,143.42.

17 By Debtor’s own admission he cannot keep current with plan payments, let alone
18 cure the default that is now more than \$52,559.98. Opposition, p. 3, lns. 1-4. The Debtor
19 has been given sufficient time to cure the default and the terms of within the plan must
20 prevail.

21 Section 7.04 Post-Confirmation Default of the Amendment, filed by Debtor, gives
22 the Department the remedy of filing the instant motion for post-confirmation default.
23 [Doc. 97]. Under the mandatory terms of Section 7.04, the Department was required to
24 give written notice to Debtor of the default after which Debtor would have fifteen
25 calendar days to (i) cure the default; (ii) obtain from the Bankruptcy Court an extension of
26 time to cure the default, which shall be given for good cause shown if the cure reasonably
27 requires more than fifteen (15) days to cure and the Debtor initiates reasonable steps to
28 begin such cure and completes all reasonable and necessary steps to cure sufficient to

produce compliance as soon as reasonably practical. The Debtor first provided Debtor notice on September 13, 2023. Debtor has not complied with terms in Section 7.04.

C. Plan Payments Have Been Accounted For

Debtor erroneously asserts the Department did not account for all plan payments. Opposition, p. 2, lns. 1-5. Declaration p. 1, lns 21-24 and Exhibit 1. Debtor provided copies of seven checks which are all accounted for.

PERIOD	CHECK AMOUNT	CHECK NUMBER	NOTE
03/31/2022	\$3,285.71	1439	Plan Payment
04/30/2022	\$3,285.71	1472	Plan Payment
05/31/2022	\$3,285.71	1498	Plan Payment
06/30/2022	\$3,285.71	1523	Plan Payment – Check insufficient funds
07/31/2022	\$3,285.71	2007	Plan Payment
09/30/2022	\$3,285.17	2032	Plan Payment – Check insufficient funds
08/22/2022	\$216.32	2021	Non plan payment credited to tax account. ¹

D. Business License

Throughout Debtor's opposition he blames the Department for his failure to make plan payments. Opposition, p. 3, lns. 9-12. Declaration p. 2, lns 12-15 and Exhibit 1. Specifically, Debtor asserts, nine months ago the state refused Debtor's request to move his business license location. Debtor's argument is fundamentally flawed, and this is the improper venue to bring it.² The business license issue is red hearing and should not be entertained by the Court.

II. CONCLUSION

Based on the foregoing, this instant matter should be converted from a chapter 11, subchapter V bankruptcy to a chapter 7 bankruptcy. Debtor has failed to make the appropriate plan payments as prescribed in the plan confirmed by this Court. Further, there are sufficient grounds to convert this matter to chapter 7 pursuant to 11 U.S.C. § 1112(b)(2). Finally, the Debtor cannot show that "unusual circumstances" to justify

¹ Debtor still has a tax account to which the tax payment was applied to.

² Nevada Revised Statutes ("NRS") 360.205 governs the granting or denial of license. If Debtor is claiming a licensing dispute with the Department, he should exhaust administrative remedies. NRS 360.255 sets forth confidentiality for disclosure of a taxpayer's information and the Department cannot unilaterally waive confidentiality.

1 their reasoning for missed payments exist. Therefore, this matter should be converted to
2 chapter 7, or if the court deems justified, dismissed.

3 DATED: January 3, 2024.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Mary M. Huck
7 MARY M. HUCK (Bar No. 12031)
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8 By: /s/ Kayla D. Dorame
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